United Nations CEDAW/C/68/D/79/2014

Convention on the Elimination of All Forms of Discrimination against Women

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Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 79/2014*,**

Communication submitted by:	S.J.A. (represented by counsel, Tage Gottsche)
Alleged victim:	The author
State party:	Denmark
Date of communication:	2 December 2014 (initial submission)
References:	Transmitted to the State party on 5 December 2014 (not issued in document form)
Date of adoption of decision:	6 November 2017

* Adopted by the Committee at its sixty-eighth session (23 October–17 November 2017).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Nicole Ameline, Magalys Arocha Dominguez, Gunnar Bergby, Marion Bethel, Louiza Chalal, Hilary Gbedemah, Nahla Haidar, Yoko Hayashi, Lilian Hofmeister, Ismat Jahan, Dalia Leinarte, Rosario Manalo, Lia Nadaraia, Aruna Devi Narain, Patricia Schulz, Wenyan Song and Aicha Vall Verges.

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1.1 The author of the communication is S.J.A., a Somali national born in 1989. She claims that her deportation from Denmark to Somalia would violate her rights under articles 3, 5 and 16 (b) of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for Denmark in 1983 and 2000, respectively. The author is represented by counsel, Tage Gøttsche.

1.2 The author's application for asylum was rejected by the Danish Immigration Service on 9 July 2014. The Refugee Appeals Board dismissed the appeal against that decision on 24 November 2014. She was ordered to leave Denmark by 8 December 2014. On 5 December 2014, the Committee, acting through its Working Group on Communications under the Optional Protocol, requested the State party to refrain from expelling the author to Somalia pending the consideration of her case by the Committee, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure.

1.3 On 10 December 2014, the Refugee Appeals Board suspended the time limit for the author's departure from Denmark until further notice, in accordance with the Committee's request.

1.4 On 11 November 2015 and 18 February 2016, the Committee denied the State party's requests to lift the interim measures.

Facts as submitted by the author

2.1 The author originates from Ceel Garas, Galguduud region. She arrived in Denmark in April 2014, seeking to escape a forced marriage to a member of Al-Shabaab. In December 2013, while she was walking to a school, A.H., a high-ranking member of Al-Shabaab, noticed her. Thereafter, he went to her father several times to ask him to hand over the author for the purpose of marriage. The author's father initially refused and then attempted to delay his final answer. The author did not want to marry. Consequently, her father began to arrange her escape from Somalia. The author's aunt sold some of her land to pay for the author's travel.

2.2 On 12 February 2014, A.H. came to the author's house and forced her to follow him to the Al-Shabaab headquarters in the town, where she was told that, if she refused to marry him, he would kill her. The author said that she would think about it, and A.H. released her. The author's parents then organized her departure. She travelled to her aunt's house in Dhuusamarreeb and, three days later, fled to Denmark. She travelled via Ethiopia and Turkey, without travel documents.

2.3 On 24 April 2014, the author arrived and applied for asylum in Denmark.

2.4 On 9 July 2014, the author's asylum application was rejected by the Danish Immigration Service. On 24 November 2014, that decision was upheld by the Refugee Appeals Board. The Board concluded that the author's story and claims lacked credibility; her explanations and account of specific facts were evasive, unclear and sometimes inconsistent and appeared to have been fabricated. Consequently, the Board requested the author to leave the country by 8 December 2014.

2.5 In accordance with the Aliens Act, decisions of the Refugee Appeals Board are not subject to appeal. The author thus contends that she has exhausted all available domestic remedies.

Complaint

3.1 The author claims that her deportation to Somalia would constitute a violation of her rights under articles 3, 5 and 16 (b) of the Convention. Given the general conditions prevailing in Somalia, she also alleges a violation of article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) if she were to be removed to that country.

3.2 The author alleges that, if returned to Somalia, she would be forced to marry an Al-Shabaab member and would not have the same right to choose a spouse and to enter into a marriage with her full consent as guaranteed by article 16 (b) of the Convention. In addition, she fears that she would be killed or tortured by A.H. or other members of Al-Shabaab because she did not want to marry him. She further claims that, were she to be deported, the State party would violate articles 3 and 5 of the Convention as she would not be guaranteed the exercise of her human rights and fundamental freedoms on the basis of equality with men.

3.3 The author also contests the fact that the decision of the Refugee Appeals Board is mainly based on her credibility[1] and contends that the Board did not investigate the risk that she would face if she were to be returned.

State party's observations on admissibility and the merits

4.1 On 3 June 2015, the State party submitted its observations on the admissibility and the merits of the communication.

4.2 The State party submits that the author has failed to establish a prima facie case for the purpose of rendering her communication admissible. It adds that the Refugee Appeals Board was unable to accept any part of the author's statements as factual, while also recalling inconsistencies in her statements.

4.3 The State party provides a comprehensive description of the organization, composition, duties, prerogatives and jurisdiction of the Refugee Appeals Board and the guarantees for asylum seekers, including legal representation, the presence of an interpreter and the possibility for an asylum seeker to make a statement on appeal. It also notes that the Board has a comprehensive collection of general background material on the situation in the countries from which Denmark receives asylum seekers, which is updated and supplemented on a continuous basis from various recognized sources, all of which it takes into consideration when assessing cases.

4.4 Recalling the Committee's decision in *M.N.N. v. Denmark*,[2] the State party indicates that the Convention has extraterritorial effect only when it is foreseeable that serious gender-based violence would occur upon the author's return. It therefore submits that the risk of such violence must be real, personal and foreseeable. In this connection, the State party asserts that the author has failed to establish a prima facie case for the purposes of rendering her communication admissible under article 4 (2) (c) of the Optional Protocol on the grounds that she has not substantiated the

[1] With respect to whether the author told A.H. that she would marry him before he allowed her to go back to her parents' house on 12 February 2014; whether the author told the truth, in that she provided an evasive reply when asked whether her aunt had money to pay for the author's departure from Somalia only three days after the author's last encounter with A.H.; and why the author did not escape earlier, given that A.H. had contacted her father several times and made threats.

[2] CEDAW/C/55/D/33/2011.

claim that she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence if she were returned to Somalia.

4.5 The State party asserts that, should the Committee find the communication to be admissible and proceed with its consideration of the merits, the author has not sufficiently substantiated the claim that she would be exposed to a real, personal and foreseeable risk of serious forms of gender-based violence if she were returned to Somalia.

4.6 The State party recalls that the author's statements before the Danish Immigration Service and the Refugee Appeals Board were inconsistent. In addition to the issue of her contentious reply to A.H. when they last met, the author also made inconsistent statements about her aunt, including the circumstances of the latter's death. During the asylum screening interview on 9 May 2014, the author submitted that her three aunts were nomads from Xarardheere. Later in the same interview, the author stated that one of her aunts had paid for her departure from her country of origin and that her aunt had sold her land. She then claimed that her aunt had since died, but had been living in Dhuusamarreeb. She later reported that her father had told her that her aunt had been killed by Al-Shabaab because Al-Shabaab knew that she had helped the author to leave the village. The author provided evasive and unconvincing explanations about both her aunt's killing and the position of A.H. in her home village.

4.7 According to the State party, the author also provided incoherent and conspicuously fabricated statements regarding her contact with her family after her departure from her country of origin. When interviewed by the Danish Immigration Service on 13 June 2014, the author submitted that she had last been in contact with her family about 20 days prior to the interview — which corresponds to May 2014 — and also on 25 April 2014. At the oral hearing before the Refugee Appeals Board on 24 November 2014, the author stated that she had been in contact with family in her country of origin twice since, most recently in June 2014. The author then stated that the village was empty, as everybody had fled. When asked how she had obtained that information, she responded that no one had told her. Even though she was asked several times, she was unable to disclose the source of the information, repeating only that "she knew" that the village was deserted.

4.8 The State party cannot accept that the author had a conflict with a high-ranking Al-Shabaab member, nor that she would be forcibly married to or killed by A.H. in the case of her return to Somalia. It therefore cannot conclude that the author fears any asylum-relevant persecution in the case of her return to Somalia. It adds that the author's communication was submitted shortly after the Refugee Appeals Board made its decision and that she has failed to produce new and specific information about her situation, instead merely repeating the factual information that formed the basis of the Board's decision of 24 November 2014. In that regard, the Board determined that the author's statement appeared unspecific, fabricated for the occasion and not based on her personal experiences. The State party adds that the decision of the Board is not mainly based on the author's credibility, but on an overall assessment of whether the author was eligible for residence under section 7 of the Aliens Act, including an assessment of the existing background information and the author's physical and mental condition. That assessment also took account of the risk of abuse owing to the general conditions in Somalia.

4.9 The State party considers that the overall situation in Somalia cannot independently justify asylum. The State party has taken into account background information on the general situation in southern and central Somalia.[3] None of the background information currently available, however, can lead to the conclusion that the general situation in Ceel Garas is independently of such a nature that, if returned to Somalia, the author would risk persecution justifying her being granted asylum.

4.10 Lastly, the State party stresses that that it cannot be considered to be a fact that the author would be a single woman with no support network if returned to her country of origin, given that, according to her own statement at the asylum screening interview on 9 May 2014, she has her parents and three siblings in her home village and belongs to the Duduble clan, which is the only clan there.

4.11 The State party concludes that the Refugee Appeals Board, a collegial body of a quasi-judicial nature, made a thorough assessment of the author's credibility, the background information available and the author's specific circumstances and found that the author had failed to render it probable that, in the case of her return to Somalia, she would risk persecution or abuse justifying her being granted asylum. The author's communication merely reflects that she disagrees with the assessment of her case by the Board. She failed to identify any irregularity in the decision-making process or any risk factors that the Board had failed to take properly into account. The author is attempting to use the Committee as an appellate body to have the factual circumstances in support of her claim for asylum reassessed by the Committee. The State party submits that the Committee must give considerable weight to determination of the Board, which is better placed to assess the factual circumstances of the author's case. Thus, in the State party's opinion, there is no basis for doubting, let alone setting aside, the assessment made by the Board, according to which the author has failed to establish that there are substantial grounds for believing that she would be subject to a real, personal and foreseeable risk of persecution if returned to Somalia and that the necessary and foreseeable consequence of a return is that her rights under the Convention would be violated. It would not therefore constitute a breach of articles 3, 5 and 16 (b) of the Convention to return the author to Somalia.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 26 August 2015, the author submitted her comments on the State party's observations.

5.2 Reiterating her earlier statements, she stresses that she would be exposed to a real, personal and foreseeable risk of serious gender-based violence and a risk of forced marriage if she were returned to Somalia.

5.3 The author also stresses that the State party has not investigated the dangerousness of the situation to which she is exposed. She reiterates that her removal to Somalia would constitute a breach of articles 3, 5 and 16 (b) of the Convention.

State party's additional observations

6.1 On 3 February 2016, the State party submitted its additional observations.

[3] The background information includes the report of the Secretary-General on Somalia of 12 May 2014 (S/2014/330); the African Union Mission in Somalia press release of 26 March 2014, entitled "AMISOM and Somali National Army capture Eel Buur town"; and country information and guidance, published by the Home Office of the United Kingdom of Great Britain and Northern Ireland in February 2015.

6.2 The State party refers to the judgment delivered by the European Court of Human Rights on 10 September 2015 in *R.H. v. Sweden* (application No. 4601/14) concerning a Somali woman, in paragraph 70 of which the Court stated that "it may be concluded that a single woman returning to Mogadishu without access to protection from a male network would face a real risk of living in conditions constituting inhuman or degrading treatment under Article 3 of the Convention".

6.3 The State party considers, however, that this decision has no bearing on the author's case, given that the latter's circumstances differ considerably from those of R.H., notably because it cannot be considered to be a fact that the author would be a single woman with no support network if returned to her country of origin, given that, according to her own statement at the asylum screening interview on 9 May 2014, she has her parents and three siblings in her home village and belongs to the Duduble clan, which is the only clan there. The author also stated during the same interview that she had an uncle, I.A.B., who lived in her village.

6.4 Referring to the jurisprudence of the Human Rights Committee, notably the cases of *P.T. v. Denmark*[4] and *K. v. Denmark*,[5] the State party notes that the Committee should give importance to the assessment conducted by the State party, unless it is found that the evaluation was clearly arbitrary or amounted to a denial of justice. It reiterates that, in the case at issue, no such defect in the procedure occurred and the author failed to establish a prima facie case for the purpose of admissibility, meaning that the communication is manifestly ill-founded and should be considered inadmissible. The State party further maintains that, should the Committee find the communication admissible, it has not been established that there are substantial grounds for believing that it would constitute a violation of the Convention to return the author to Somalia.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol. Pursuant to rule 66, the Committee may decide to consider the admissibility of the communication separately from its merits.

7.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee is satisfied that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes that the author claims to have exhausted domestic remedies and that the State party has not challenged the admissibility of the communication on that ground. The Committee observes that, according to the information available to it, decisions of the Refugee Appeals Board are not subject to appeal before the national courts. Accordingly, the Committee considers that it is not precluded by the requirements of article 4 (1) of the Optional Protocol from examining the communication.

7.4 The Committee notes the author's claim under article 3 of the European Convention on Human Rights and the State party's observation that the European Convention is not within the scope of the Committee. Accordingly, the Committee considers that the alleged violation of the European Convention is inadmissible as being incompatible with the Convention under article 4 (2) (b) of the Optional Protocol.

7.5 The Committee takes note of the State party's claim that the communication is manifestly ill-founded, pursuant to article 4 (2) (c) of the Optional Protocol, owing to lack of substantiation. In this regard, the Committee recalls the author's claim that a member of Al-Shabaab named A.H. threatened to kill her if she did not marry him and that those events prompted her to flee her village, with her family's assistance. The author has claimed that, if the State party returned her to Somalia, she would be personally exposed to serious forms of gender-based violence under articles 3, 5 and 16 (b) of the Convention. The author has further alleged that the State party should have undertaken an independent investigation into the risk that she faces in Somalia.

7.6 The Committee refers to paragraph 21 of its general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, in which it has stated that, under international human rights law, the non-refoulement principle imposes a duty on States to refrain from returning a person to a jurisdiction in which he or she may face serious violations of human rights, notably the arbitrary deprivation of life or torture or other cruel, inhuman or degrading treatment or punishment. The Committee further refers to paragraph 7 of its general recommendation No. 19 (1992) on violence against women, in which it recalled that gender-based violence, which impaired or nullified the enjoyment by women of human rights and fundamental freedoms under general international law or under human rights conventions, was discrimination within the meaning of article 1 of the Convention, and that such rights included the right to life and the right not to be subject to torture. The Committee has further elaborated its interpretation of violence against women as a form of gender discrimination in its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, in paragraph 21 of which it reiterated the obligation of States parties to eliminate discrimination against women, including gender-based violence, resulting from the acts or omissions of the State party or its actors, on the one hand, and non-State actors, on the other.

7.7 In the case at issue, the Committee observes that there is no claim that the State party directly violated the particular provisions of the Convention invoked, but that by returning the author to Somalia would expose her to serious forms of gender-based violence at the hands of private individuals related to a member of Al-Shabaab.

7.8 The Committee recalls that it is generally for the authorities of States parties to the Convention to evaluate the facts and evidence or the application of national law in a particular case,[6] unless it can be established that the evaluation was biased or based on gender stereotypes that constitute discrimination against women, was clearly arbitrary or amounted to a denial of justice.[7] In that regard, the Committee notes that, in substance, the author's claims are aimed at challenging the manner in which the State party's authorities assessed the factual circumstances of her case, applied the provisions of legislation and reached conclusions. The issue before the Committee is therefore whether there was any irregularity in the decision-making process regarding the author's asylum application to the extent that the State party's authorities failed to properly assess the risk of serious gender-based violence in the event of her return to Somalia.

[4] See CCPR/C/113/D/2272/2013, para. 7.3.
[5] See CCPR/C/114/D/2393/2014, paras. 7.4 and 7.5.
[6] See, for example, *R.P.B. v. Philippines* (CEDAW/C/57/D/34/2011), para. 7.5.
[7] See, for example, *N.Q. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013).

7.9 In that regard, the Committee notes that the State party's authorities found that the author's account lacked credibility owing to factual inconsistencies and a lack of substantiation. The Committee further observes that the limited information provided by the author to the Committee corroborates the determination of the State party's authorities that the author's claims lacked substantiation. In addition, the Committee notes that the author made an insufficient link between the alleged facts and the violation of the articles of the Convention that she invokes vis-à-vis Denmark. The Committee further notes that the State party took into consideration the general situation in Somalia, as well as the existence of a family network consisting of her parents and three siblings in the village of Ceel Garas, from which she originates.

7.10 In the light of the foregoing, and while not underestimating the concerns that may legitimately be expressed with regard to the general human rights situation in Somalia, in particular concerning the human rights of women, the Committee considers that nothing on file permits it to conclude that the State party's authorities failed to give sufficient consideration to the author's asylum claims, or that the national-level examination of her asylum case otherwise suffered from any procedural defect.

8. The Committee therefore decides that:

(a) The communication is inadmissible under article 4 (2) (c) of the Optional Protocol;

(b) This decision shall be communicated to the State party and to the author.